

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
KING COUNTY**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

Equilon Enterprises LLC

Defendant.

No.

**CONSENT DECREE**

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	3
II.	JURISDICTION .....	4
III.	PARTIES BOUND .....	5
IV.	DEFINITIONS .....	5
V.	STATEMENT OF FACTS .....	6
VI.	WORK TO BE PERFORMED .....	8
VII.	DESIGNATED PROJECT COORDINATORS .....	10
VIII.	PERFORMANCE .....	11
IX.	ACCESS .....	11
X.	SAMPLING, DATA REPORTING, AND AVAILABILITY .....	11
XI.	PROGRESS REPORTS .....	12
XII.	RETENTION OF RECORDS .....	13
XIII.	TRANSFER OF INTEREST IN PROPERTY .....	13
XIV.	RESOLUTION OF DISPUTES .....	14
XV.	AMENDMENT OF CONSENT DECREE .....	15
XVI.	EXTENSION OF SCHEDULE .....	16
XVII.	ENDANGERMENT .....	17

XVIII.	COVENANT NOT TO SUE.....	18
XIX.	INDEMNIFICATION.....	19
XX.	COMPLIANCE WITH APPLICABLE LAWS.....	20
XXI.	REMEDIAL AND INVESTIGATIVE COSTS.....	21
XXII.	IMPLEMENTATION OF REMEDIAL ACTION.....	22
XXIII.	FIVE YEAR REVIEW.....	22
XXIV.	PUBLIC PARTICIPATION.....	23
XXV.	DURATION OF DECREE.....	23
XXVI.	CLAIMS AGAINST THE STATE.....	24
XXVII.	EFFECTIVE DATE.....	24
XXVIII.	PUBLIC NOTICE AND WITHDRAWAL OF CONSENT .....	24
XXIX.	LAND USE RESTRICTIONS .....	25
XXX.	CONTRIBUTION PROTECTION.....	25
XXXI.	RESERVATION OF RIGHTS.....	26

Exhibit A: Site Diagram

Exhibit B: Draft Cleanup Action Plan

Exhibit C: Site Access and Operating Procedures

Exhibit D: Restrictive Covenant

Exhibit E: Schedule

Exhibit F: Groundwater Compliance Monitoring Plan

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and Equilon Enterprises LLC and Texaco Refining and Marketing Inc. (TRMI), here and after referred to collectively as Equilon is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Equilon to undertake the following remedial action(s):

1. Implement the Cleanup Action Plan (CAP)
2. Provide for public participation
3. Provide Remedial Design (RD)
4. Implement the Groundwater Compliance Monitoring that includes:
  - a. Protection monitoring
  - b. Performance monitoring
  - c. Confirmational monitoring

Ecology has determined that these actions are necessary to protect public health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the parties wish to resolve the issues raised by Ecology's complaint. In addition, the parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, Equilon agrees to its entry and agrees to be bound by its terms.

D. By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the complaint. The

1 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
2 sums expended under this Decree.

3 E. This Decree is not an admission of and shall not be construed as proof of liability  
4 or responsibility for any releases of hazardous substances or cost for remedial action nor an  
5 admission of any facts; provided, however, that Equilon shall not challenge the jurisdiction of  
6 Ecology in any proceeding to enforce this Decree. This Decree supercedes Agreed Order No.  
7 DE-92 TC-N160.

8 F. The Court is fully advised of the reasons for entry of this Decree, and good cause  
9 having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS  
10 FOLLOWS:

## 11 **II. JURISDICTION**

12 A. This Court has jurisdiction over the subject matter and over the parties pursuant to  
13 Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), and venue is proper in King  
14 County.

15 B. Authority is conferred upon the Washington State Attorney General by RCW  
16 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public notice  
17 and hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of  
18 hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a  
19 consent decree issued by a court of competent jurisdiction.

20 C. Ecology has determined that a release or threatened release of hazardous  
21 substances has occurred at the Site which is the subject of this Decree.

22 D. Ecology has given notice to Equilon, as set forth in RCW 70.105D.020(15), of  
23 Ecology's determination that Equilon is a potentially liable person for the Site and that there has  
24 been a release or threatened release of hazardous substances at the Site.  
25  
26

1 E. The actions to be taken pursuant to this Decree are necessary to protect public  
2 health, welfare, and the environment, AND TO COMPLY WITH MTCA AND CERCLA.

3 F. Equilon has agreed to undertake the actions specified in this Decree and consents  
4 to the entry of this Decree under the MTCA.

### 5 III. PARTIES BOUND

6 This Decree shall apply to and be binding upon the signatories to this Decree (parties),  
7 their successors and assigns. The undersigned representative of each party hereby certifies that he  
8 or she is fully authorized to enter into this Decree and to execute and legally bind such party to  
9 comply with the Decree. Equilon agrees to undertake all actions required by the terms and  
10 conditions of this Decree and not to contest state jurisdiction regarding this Decree. No change in  
11 ownership or corporate status shall alter the responsibility of Equilon under this Decree. Equilon  
12 shall provide a copy of this Decree to all agents, contractors and subcontractors retained to  
13 perform work required by this Decree and shall ensure that any contract for such work will be in  
14 compliance with this Decree.

### 15 IV. DEFINITIONS

16 Except as specified herein, all definitions in WAC 173-340-200 apply to the terms in this  
17 Decree.

18 A. Site: The Site, owned by Equilon, is divided into three parcels: the Main Terminal  
19 and Tank Farm, the North Tank Farm, and the Shoreline Manifold Area located at 2555 13th  
20 Avenue SW, 1835 13th Avenue, and 1711 13th Avenue SW, respectively, Seattle, Washington,  
21 98124 (collectively referred to as the "Site") on Harbor Island. The Site is part of the Tank Farm  
22 Operable Unit One (OU1) for the Harbor Island Superfund Site. The Site is more particularly  
23 described in Exhibit A to this Decree which is a detailed site diagram.

24 B. Parties: Refers to the Washington State Department of Ecology and Equilon.  
25  
26

1 C. Equilon: Refers to Equilon Enterprises LLC and Texaco Refining and Marketing  
2 Inc. (TRMI).

3 D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits  
4 to the Decree. All exhibits are by this reference incorporated herein, and are integral and  
5 enforceable parts of this Consent Decree. The terms "Consent Decree" or "Decree" shall include  
6 all exhibits to the Consent Decree.

### 7 V. STATEMENT OF FACTS

8 Ecology makes the following finding of facts without any express or implied admissions by  
9 Equilon.

10 A. Equilon presently owns the following property known as Equilon Seattle Sales  
11 Terminal. The facility is divided into three parcels: the Main Terminal and Tank Farm, the North  
12 Tank Farm, and the Shoreline Manifold Area located at 2555 13th Avenue SW, 1835 13th  
13 Avenue, and 1711 13th Avenue SW, respectively, Seattle, Washington, 98124 (collectively  
14 referred to as the "Site"). The Main Terminal consists of two office buildings, a warehouse, a  
15 former bottle filling building, a blending building, a light oil truck loading rack, a lube oil truck  
16 loading rack, pipeline receipt facilities, two regulated underground storage tanks (USTs), five  
17 unregulated USTS, eighty-three above-ground storage tanks, piping, pumps, a boiler, and a  
18 garage. The products stored at the Main Terminal and Tank Farm include three grades of motor  
19 gasoline, aviation gasoline, jet fuel, middle distillates (e.g., diesel #2), and lubricating oils. The  
20 North Tank Farm contains two above-ground storage tanks that store diesel. The Shoreline  
21 Manifold Area and Dock consists of manifolds controlling the flow of product between the tank  
22 farms and the dock.

23 B. Ecology files contain the following report: Remedial Investigation, Texaco Harbor  
24 Island Terminal, Seattle, Washington. EMCON Northwest, Inc., Final 1996 RI Report. Based  
25 on the RI Report, Ecology finds as follows:  
26

1                   1.       Free-phase hydrocarbons are confirmed to be present on the Site situated  
2 at the top of the water table at the Main Terminal, North Tank Farm, and beneath the Shoreline  
3 Manifold Area next to Elliott Bay; and

4                   2.       Residual hydrocarbons exceeding MTCA methods A and B matrix  
5 concentrations are confirmed to be present in the soil at the Site beneath portions of the Main  
6 Terminal, North Tank Farm, and the Shoreline Manifold Area.

7                   3.       Dissolved petroleum hydrocarbons exceeding the Surface Water Quality  
8 Standards are confirmed to be present in the groundwater at the Site beneath areas of the Main  
9 Terminal, North Tank Farm, and the Shoreline Manifold Area.

10                  4.       Lead and arsenic above Method A concentrations are confirmed to be  
11 present in the surface soil at the Tank Farm of the Main Terminal and the North Tank Farm.

12                  C.       Ecology files contain the following report: Final Focused Feasibility Study Report;  
13 Texaco Harbor Island Terminal, Seattle, Washington. EMCON, Inc., May 14, 1997 (FFS  
14 Report). Based on the FFS Report, Ecology finds as follows:

15                   1.       Equilon identified a preferred remedy after evaluating other alternative  
16 remedies to address the hazardous substances located on site. Ecology concurs that the remedy  
17 preferred by Equilon is appropriate. The preferred remedy is to:

18                   a.       Continue product recovery and associated dissolved TPH  
19 hydrocarbons plume removal at the Shoreline Manifold Area;

20                   b.       Remove free product from the groundwater throughout the site;

21                   c.       Excavate accessible TPH hot spots over 10,000 mg/kg (EPA ROD  
22 for TPH hot spot is 10,000 mg/kg for Harbor Island) in the subsurface soil to improve  
23 groundwater quality at the shoreline;

24                   d.       Excavate accessible TPH hot spots over 20,000 mg/kg (EPA  
25 Guideline for Corrective Action Plan and Monitored Natural Attenuation Documents) in the  
26

1 subsurface soil to improve groundwater quality, enhance biodegradation of residual TPH and  
2 provide a more timely restoration of the inland portions of the site;

3 e. Excavate lead hot spots in surface soils adjacent to the oil/water  
4 separator, and dispose or treat off-site;

5 f. Cap or excavate surface soils in which concentrations exceed 1,000  
6 mg/kg for lead and 32.6 mg/kg for arsenic (EPA ROD for Surface Soils on Harbor Island) to  
7 prevent direct contact, prevent infiltration to the groundwater, and prevent surface runoff to the  
8 bay through storm drains; and

9 g. Implement a groundwater monitoring program, institutional  
10 controls, and, contingency plans. The groundwater monitoring program may include  
11 bioassay/sediment sampling at the Shoreline Manifold and evaluation of additional remedial  
12 actions if triggered by the contingency plans.

13 D. In August, 1995, the United States District Court for Western District of  
14 Washington (Civil Action No. 95-01495-Z) entered a Consent Decree (Federal Consent Decree)  
15 in *U.S. v. The Port of Seattle et al.* relating to claims under the Comprehensive Environmental  
16 Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., involving the  
17 Harbor Island Superfund Site. Article I, Paragraph 8 of the Federal Consent Decree identifies  
18 operable units within the Harbor Island Superfund Site and recites that the Petroleum Tank Farm  
19 Operable Unit is under the management of the Department of Ecology. The Environmental  
20 Protection Agency and Ecology have entered into Memorandums of Understanding, dated  
21 February 5, 1991 and March 3, 1994, setting forth the duties and responsibilities of each agency  
22 with regard to site management and enforcement activities at the Harbor Island Superfund Site.

## 23 VI. WORK TO BE PERFORMED

24 This Decree contains a program designed to protect public health, welfare and the  
25 environment from the known release, or threatened release, of hazardous substances at, on, or  
26



1 from the Site. Equilon agrees to take the following remedial actions and to conduct all work in  
2 accordance with Ch. 173-340 WAC, unless otherwise specifically provided herein. These actions  
3 are more specifically described in the Draft Cleanup Action Plan attached as Exhibit B.

4 A. Task 1: Implement the Cleanup Action Plan:

5 1. Continue with product and associated dissolved TPH hydrocarbon  
6 recovery along the Shoreline Manifold Area next to Elliott Bay. In addition, remove free product  
7 from the groundwater throughout the site;

8 2. Excavate TPH hot spots above 10,000 mg/kg in the subsurface soil along  
9 the shorelines and above 20,000 mg/kg at the inland portions of the site to improve groundwater  
10 quality, enhance biodegradation of the residual TPH and provide a more timely restoration of the  
11 affected areas;

12 3. Excavate lead hot spots in the surface soil next to the oil/water separator;

13 4. Cap or excavate surface soils in which lead and arsenic concentrations  
14 exceed 1000 mg/kg and 32.6 mg/kg, respectively (EPA ROD for Harbor Island Surface Soils);

15 5. Implement groundwater monitoring program;

16 6. As part of the groundwater monitoring program, implement  
17 sediment/bioassay sampling and additional remedial actions if triggered by the contingency plan.

18 7. Implement institutional controls and Restrictive Covenant; and

19 8. Implement contingency plans, if necessary.

20 B. Task 2: Provide for public participation.

21 C. Task 3: Provide Remedial Design (or Engineering Report).

22 D. Task 4: Implement the Compliance Groundwater Monitoring Program Exhibit F,  
23 that includes:

24 1. Protection monitoring;

25 2. Performance monitoring;  
26

3. Confirmational monitoring.

E. Task 5: Implement Schedule as outlined in Exhibit E.

F. Equilon agrees not to perform any remedial actions on the Site that are inconsistent with the remedial actions required under this consent decree.

## VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Nnamdi Madakor, Senior Hydrogeologist  
Washington State Department of Ecology  
Northwest Regional Office  
3190 160th Avenue SE  
Bellevue, WA 98008-5452  
(425) 649-7112

The project coordinator for Equilon is:

Jeff Goold, Project Manager  
Equilon Enterprises LLC  
3400 188<sup>th</sup> St SW, Suite 630  
Lynnwood, WA 98037  
(425) 774-6090 (ext. 223)

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and Equilon and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

Each party may change its respective project coordinator. Written notification shall be given to the other parties at least ten (10) days prior to the change.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

### VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. Any construction work must be under the supervision of a professional engineer. Equilon shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

### IX. ACCESS

Ecology or any Ecology-authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Equilon's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by Equilon. Without limitation on Ecology's rights under this section, Ecology will provide Equilon advance notice of its entry onto the Site when feasible. All parties with access to the Site pursuant to this paragraph shall comply with Site access and operating procedures, Exhibit C. Ecology shall make available to Equilon the results of all sampling, laboratory reports, videos and other test results generated by Ecology or on its behalf.

### X. SAMPLING, DATA REPORTING, AND AVAILABILITY

Equilon shall make available to Ecology the results of all sampling, laboratory reports, and/or test results generated by Equilon, or on its behalf, in the implementation of this Decree and shall submit these results in accordance with Section XI of this Decree.

1 In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted  
2 according to the requirements that will be established in the Groundwater Compliance Monitoring  
3 Program.

4 Each party shall allow split or replicate samples to be taken by the other and shall provide  
5 5 working days notice before conducting any sampling activities.

## 6 **XI. PROGRESS REPORTS**

7 Equilon shall submit to Ecology written progress reports that describe the actions taken to  
8 implement the requirements of this Decree. The progress report shall be prepared no more  
9 frequently than set forth in the following schedule:

- 10 • Quarterly during remedial design activities;
- 11 • Monthly during construction phase activities;
- 12 • Monthly for the first quarter after remedial system startup.

13 The frequency of progress reports to be submitted following the first quarter after remedial  
14 system startup shall be established in the Groundwater Compliance Monitoring Program.

15 Progress reports shall include the following:

- 16 A. A list of on-site activities that have taken place during the reporting period;
- 17 B. Detailed description of any deviations from required tasks not otherwise  
18 documented in project plans or amendment requests;
- 19 C. Description of all deviations from the schedule (Section VI, Work To Be  
20 Performed: Task 5) during the current reporting period and any planned deviations in the  
21 upcoming reporting period;
- 22 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
23 compliance with the schedule;
- 24 E. All raw data (including laboratory analysis) received by Equilon during the past  
25 month and an identification of the source of the sample; and  
26

1 F. A list of deliverables for the upcoming month if different from the schedule.

2 All progress reports shall be submitted by the fifteenth day of the reporting period in  
3 which they are due after the effective date of this Decree. Unless otherwise specified, progress  
4 reports and any other documents submitted pursuant to this Decree shall be sent to Ecology's  
5 project coordinator.

6 **XII. RETENTION OF RECORDS**

7 Equilon shall preserve, during the pendency of this Decree and for ten (10) years from the  
8 date this Decree is no longer in effect as provided in Section XXV, all records, reports,  
9 documents, and underlying data in its possession relevant to the implementation of this Decree  
10 and shall insert in contracts with project contractors and subcontractors a similar record retention  
11 requirement. Upon request of Ecology, Equilon shall make all non-archived, non-privileged  
12 records available to Ecology and allow access for review. All archived non-privileged records  
13 shall be made available to Ecology within a reasonable period of time.

14 **XIII. TRANSFER OF INTEREST IN PROPERTY**

15 Prior to any voluntary or involuntary conveyance or relinquishment of title, easement,  
16 leasehold, or other interest in any portion of the Site, Equilon shall provide for continued  
17 operation and maintenance of any containment system, treatment system, and monitoring system  
18 installed or implemented pursuant to this Decree.

19 Prior to transfer of any legal or equitable interest in all or any portion of the property, and  
20 during the effective period of this Decree, Equilon shall serve a copy of this Decree upon any  
21 prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property;  
22 and, at least thirty (30) days prior to any transfer, Equilon shall notify Ecology of said  
23 contemplated transfer.

#### **XIV. RESOLUTION OF DISPUTES**

A. In the event a dispute arises as to an approval, disapproval, payment obligation, proposed modification or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute resolution procedure set forth below.

1. Upon receipt of the Ecology project coordinator's decision, Equilon has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

2. The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

3. Equilon may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

4. Ecology's Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of Equilon request for review. The Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to Equilon, the parties may, by mutual agreement, submit the dispute to a neutral mediator. If the parties reach agreement as a result of the mediation, they shall jointly prepare a written resolution of the dispute immediately following the mediation session. If the parties fail to reach agreement as a result of the mediation, then Ecology shall, within thirty (30) days after the conclusion of the mediation, issue a written statement either reaffirming its original decision or setting forth a new decision. Equilon has the right to submit the dispute to the Court for resolution within thirty (30) days after any of the following: (i) Equilon receives written notice that Ecology does not agree to submit the dispute to mediation; (ii) after mediation, Equilon receives a written statement from Ecology that is

1 unacceptable to Equilon; or (iii) Ecology fails to issue the final decision described earlier in this  
2 paragraph. The parties agree that one judge should retain jurisdiction over this case and shall, as  
3 necessary, resolve any dispute arising under this Decree.

4 C. For disputes that involve Ecology's investigative and remedial decisions, and  
5 others covered by RCW 70.105D.060, the standard of review shall be arbitrary and capricious.  
6 For all other disputes, the court shall decide the standard of review.

7 D. The parties agree to only utilize the dispute resolution process in good faith and  
8 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
9 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the  
10 other party may seek sanctions.

11 Implementation of these dispute resolution procedures shall not provide a basis for delay  
12 of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension  
13 or the Court so orders.

#### 14 **XV. AMENDMENT OF CONSENT DECREE**

15 Except for an extension granted pursuant to Section XVI below or technical revisions to  
16 Section VI or Exhibit B affecting the nature or scope of remedial work, this Decree may only be  
17 amended by a written stipulation among the parties to this Decree that is entered by the Court or  
18 by order of the Court. Such amendment shall become effective upon entry by the Court.  
19 Agreement to amend shall not be unreasonably withheld by any party to the Decree.

20 Equilon shall submit any request for an amendment to Ecology for approval. Ecology  
21 shall indicate its approval or disapproval in a timely manner after the request for amendment is  
22 received. If the amendment to the Decree is substantial, Ecology will provide public notice and  
23 opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does  
24 not agree to any proposed amendment, the disagreement may be addressed through the dispute  
25 resolution procedures described in Section XIV of this Decree. Technical revisions to Section VI  
26

1 or Exhibit B, affecting the nature or scope of remedial work, may be made by mutual written  
2 agreement of the parties without approval of the court.

### 3 **XVI. EXTENSION OF SCHEDULE**

4 A. An extension of schedule shall be granted only when a request for an extension is  
5 submitted in a timely fashion, generally at least 15 days prior to expiration of the deadline for  
6 which the extension is requested, and good cause exists for granting the extension. All extensions  
7 shall be requested in writing. The request shall specify the reason(s) the extension is needed.

8 An extension shall only be granted for such period of time as Ecology determines is  
9 reasonable under the circumstances. A requested extension shall not be effective until approved  
10 by Ecology or the Court. Ecology shall act upon any written request for extension in a timely  
11 fashion. It shall not be necessary to formally amend this Decree pursuant to Section XV when a  
12 schedule extension is granted.

13 B. The burden shall be on Equilon to demonstrate to the reasonable satisfaction of  
14 Ecology that the request for such extension has been submitted in a timely fashion and that good  
15 cause exists for granting the extension. Good cause includes, but is not limited to, the following.

16 1. Circumstances beyond the reasonable control and despite the due diligence  
17 of Equilon including delays caused by unrelated third parties or Ecology, such as (but not limited  
18 to) delays by Ecology in reviewing, approving, or modifying documents submitted by Equilon; or

19 2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,  
20 or other unavoidable casualty; or

21 3. Endangerment as described in Section XVII; or

22 4. Other circumstances deemed by Ecology to be exceptional, extraordinary,  
23 or otherwise necessary to protect the environment or public interest.  
24  
25  
26



However, neither increased costs of performance of the terms of the Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Equilon.

C. Ecology may extend the schedule for a period not to exceed ninety (90) days, except where an extension is needed as a result of:

1. Delays in the issuance of a necessary permit which was applied for in a timely manner; or
2. Other circumstances deemed exceptional or extraordinary by Ecology; or
3. Endangerment as described in Section XVII.

Ecology shall give Equilon\_written notification in a timely fashion of any extensions granted pursuant to this Decree. Ecology shall not unreasonably withhold approval of requested extensions.

## XVII. ENDANGERMENT

In the event Ecology determines that activities implementing or in compliance with this Decree, or any other circumstances or activities, are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order Equilon to stop further implementation of this Decree for such period of time as needed to abate the danger or may petition the Court for an order as appropriate. During any stoppage of work under this section, the obligations of Equilon with respect to the work under this Decree which is ordered to be stopped shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable under the circumstances.

In the event Equilon determines that activities undertaken in furtherance of this Decree or any other circumstances or activities are creating an endangerment to the people on the Site or in

1 the surrounding area or to the environment, Equilon may stop implementation of this Decree for  
2 such period of time necessary for Ecology to evaluate the situation and determine whether  
3 Equilon should proceed with implementation of the Decree or whether the work stoppage should  
4 be continued until the danger is abated. Equilon shall notify Ecology's project coordinator as  
5 soon as possible, but no later than twenty-four (24) hours after such stoppage of work, and  
6 thereafter provide Ecology with documentation of the basis for the work stoppage. If Ecology  
7 disagrees with Equilon's determination, it may order Equilon to resume implementation of this  
8 Decree. If Ecology concurs with the work stoppage, Equilon's obligations shall be suspended  
9 and the time period for performance of that work, as well as the time period for any other work  
10 dependent upon the work which was stopped, shall be extended, pursuant to Section XVI of this  
11 Decree, for such period of time as Ecology determines is reasonable under the circumstances.  
12 Any disagreements arising under this clause shall be resolved through the dispute resolution  
13 procedures in Section XIV.

#### 14 **XVIII. COVENANT NOT TO SUE**

15 A. In consideration of Equilon's compliance with the terms and conditions of this  
16 Decree, Ecology covenants that compliance with this Decree shall stand in lieu of any and all  
17 administrative, legal, and equitable remedies and enforcement actions available to Ecology against  
18 Equilon for the release or threatened release of hazardous substances covered by the terms of this  
19 Decree.

20 B. This covenant is strictly limited in its application to the Site specifically described  
21 in Exhibit A and to those hazardous substances that Ecology knows to be located at the Site as of  
22 the date of entry of this Decree. This covenant is not applicable to any other hazardous substance  
23 or area, and Ecology retains all of its authority relative to such substances and areas.  
24  
25  
26

1 C. In the following circumstances Ecology may exercise its full legal authority to  
2 address releases of hazardous substances at the Site notwithstanding the Covenant Not to Sue  
3 set forth above:

4 1. If Equilon fails to comply with the terms and conditions of this Decree,  
5 including all exhibits, and, after written notice of noncompliance, fails to comply; or

6 2. If factors not known at the time of entry of this Decree, including factors  
7 listed in WAC 173-340-420(2), are discovered and Ecology determines, in light of these factors,  
8 that further remedial action is necessary at the Site to protect human health or the environment,  
9 provided that, if this paragraph becomes operative, Ecology will allow Equilon to propose the  
10 further action where such proposal can be made promptly and without endangering human health  
11 or the environment; or

12 3. If Ecology determines that conditions at the Site cause an endangerment to  
13 human health or the environment, and that actions beyond those required under this Decree are  
14 necessary.

15 D. The Covenant Not to Sue set forth above shall have no applicability whatsoever to

16 1. Criminal liability;  
17 2. Any liability for damages to natural resources;  
18 3. Any Ecology action against potentially liable persons not a party to this  
19 Decree.

## 20 **XIX. INDEMNIFICATION**

21 Equilon agrees to indemnify and save and hold the State of Washington, its  
22 employees, and agents harmless from any and all claims or causes of action for death or injuries to  
23 persons or for loss or damage to property arising from or on account of acts or omissions of  
24 Equilon, its officers, employees, agents, or contractors in entering into and implementing this  
25 Decree. However, Equilon shall not indemnify the State of Washington nor save nor hold its  
26

1 employees and agents harmless from any claims or causes of action arising out of the intentional  
2 misconduct or negligent acts or omissions of the State of Washington, or the employees or agents  
3 of the State, in implementing the activities pursuant to this Decree.

#### 4 **XX. COMPLIANCE WITH APPLICABLE LAWS**

5 A. All actions carried out by Equilon pursuant to this Decree shall be done in  
6 accordance with all applicable federal, state, and local requirements, including requirements to  
7 obtain necessary permits, except as provided in Paragraph B. of this section.

8 B. Exhibit B, the Draft Cleanup Action Plan, will be amended to include the  
9 substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of  
10 any laws requiring or authorizing local government permits or approvals for the remedial action  
11 under this Decree.

12 Equilon has a continuing obligation to determine whether additional permits or approvals  
13 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this  
14 Decree. In the event either Equilon or Ecology determines that additional permits or approvals  
15 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this  
16 Decree, it shall promptly notify the other party of this determination. Ecology shall determine  
17 whether Ecology or Equilon shall be responsible to contact the appropriate state and/or local  
18 agencies. If Ecology so requires, Equilon shall promptly consult with the appropriate state and/or  
19 local agencies and provide Ecology with written documentation from those agencies of the  
20 substantive requirements those agencies believe are applicable to the remedial action. Ecology  
21 shall make the final determination on the additional substantive requirements that must be met by  
22 Equilon and on how Equilon must meet those requirements. Ecology shall inform Equilon in  
23 writing of these requirements. Once established by Ecology, the additional requirements shall be  
24 enforceable requirements of this Decree. Equilon shall not begin or continue the remedial action  
25 potentially subject to the additional requirements until Ecology makes its final determination.  
26

1 Ecology shall ensure that notice and opportunity for comment is provided to the public  
2 and appropriate agencies prior to establishing the substantive requirements under this section.

3 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
4 exemption from complying with the procedural requirements of the laws referenced in RCW  
5 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for  
6 the State to administer any federal law, the exemption shall not apply and TRMI shall comply with  
7 both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1),  
8 including any requirements to obtain permits.

9 D. In implementing this Decree for purposes such as sampling, it is contemplated that  
10 Equilon may remove limited quantities of soil, groundwater, and other materials (collectively,  
11 "Materials") from real property within or adjacent to the Site. Any removal shall be done in  
12 compliance with all applicable laws as required by this Section XX. It is agreed that any  
13 disposition of the Material by Equilon, including documents generated pursuant to such  
14 disposition, shall not be deemed to be an admission by such party of liability for purposes of the  
15 Model Toxics Control Act.

## 16 **XXI. REMEDIAL AND INVESTIGATIVE COSTS**

17 A. Equilon agrees to pay costs incurred by Ecology pursuant to this Decree which  
18 have not been previously paid. These costs shall include work performed by Ecology or its  
19 contractors for, or on, the Site under Ch. 70.105D RCW, both prior to and subsequent to the  
20 issuance of this Decree, for investigations, remedial actions, and Decree preparation, negotiations,  
21 oversight and administration. Ecology costs shall include costs of direct activities and support  
22 costs of direct activities as defined in WAC 173-340-550(2). Equilon agrees to pay the required  
23 amount within ninety (90) days of receiving from Ecology an itemized statement of costs that  
24 includes a summary of costs incurred, an identification of involved staff, and the amount of time  
25 spent by involved staff members on the project. A general statement of work performed will be  
26

1 provided upon request and Equilon has submitted such a request to Ecology. Itemized statements  
2 shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of  
3 the itemized statement will result in interest charges at the rate of twelve percent per annum.  
4 Equilon reserves the right to review and approve any charges prior to payment. Any dispute  
5 regarding remedial and investigation costs for the Site shall be subject dispute resolution pursuant  
6 to Section XIV. Equilon reserves the right to pay the undisputed portion of an invoice and not  
7 pay the disputed portion.

## 8 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that Equilon has failed without good cause to implement the  
10 remedial action, Ecology may, after notice and reasonable opportunity to Equilon to cure the  
11 failure, perform any or all portions of the remedial action that remain incomplete. If Ecology  
12 performs all or portions of the remedial action because of Equilon's failure to comply with its  
13 obligations under this Decree, Equilon shall reimburse Ecology for the costs of doing such work  
14 in accordance with Section XXI, provided that Equilon is not obligated under this section to  
15 reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of  
16 this Decree.

## 17 **XXIII. FIVE YEAR REVIEW**

18 As remedial action, including ground water monitoring, continues at the Site, the parties  
19 agree to review the progress of remedial action at the Site, and to review the data accumulated as  
20 a result of site monitoring as often as is necessary and appropriate under the circumstances or as  
21 agreed upon in the Compliance Groundwater Monitoring Program for the Site. The parties agree  
22 to meet to discuss the Site status every five years upon request from Ecology, or at Equilon's  
23 request. Ecology reserves the right to require further remedial action at the Site under  
24 appropriate circumstances. This provision shall remain in effect for the duration of the Decree.  
25  
26

#### XXIV. PUBLIC PARTICIPATION

Ecology shall maintain the responsibility for public participation at the Site. However, Equilon shall cooperate with Ecology and, if agreed to by Ecology, shall:

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of engineering design reports. Ecology will finalize (including editing if necessary) and, after receiving and considering comments from Equilon, distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify and consult with Equilon prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments;

C. Participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter; and

D. Provide Ecology with copies of documents to be placed in information repositories to be located at the Seattle Public Library, Downtown Branch, Magazines, Newspapers and Government Publications Dept., 1000 4th Ave., Seattle, Washington 98104 and Ecology's Northwest Regional Office at 3190 160th Avenue SE, Bellevue, Washington 98008-5452. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air monitoring data; remedial actions plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

#### XXV. DURATION OF DECREE

A. This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until Equilon has received written notification from

1 Ecology that the requirements of this Decree have been satisfactorily completed. Ecology shall  
2 issue such notification within sixty (60) days after the requirements of this Decree have been  
3 satisfactorily completed. Thereafter the parties within thirty (30) days shall jointly request that the  
4 Court vacate this Consent Decree.

5 B. Upon completion of each action specified in the Final CAP, Ecology shall issue a  
6 Certificate of Completion within sixty (60) days after such action has been completed.

### 7 **XXVI. CLAIMS AGAINST THE STATE**

8 Equilon hereby agrees that it will not seek to recover any costs incurred in implementing  
9 the remedial action required by this Decree from the State of Washington or any of its agencies,  
10 with the exception of the Department of Natural Resources; and further, that Equilon will make  
11 no claim against the State Toxics Control Account or any Local Toxics Control Account for any  
12 costs incurred in implementing this Decree. Except as provided above, however, Equilon  
13 expressly reserves its right to seek to recover any costs incurred in implementing this Decree from  
14 any other potentially liable person. Equilon further reserves its right to make a claim against the  
15 State or Local Toxics Control Account for the costs incurred in remediating hazardous substances  
16 released as a result of third-party offsite activities, but only if future amendments to MTCA allow  
17 for such claims, and operate retroactively. No determination has been made whether such a claim,  
18 if filed, would be valid, and both parties agree that any claim would have to be evaluated under  
19 the law in effect at the time the claim was made.

### 20 **XXVII. EFFECTIVE DATE**

21 This Decree is effective upon the date it is entered by the Court.

### 22 **XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

23 This Decree has been the subject of public notice and comment under RCW  
24 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a  
25 more expeditious cleanup of hazardous substances at the Site.  
26



1 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at  
2 the option of any party and the accompanying Complaint shall be dismissed without costs and  
3 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.  
4

#### 5 **XXIX. LAND USE RESTRICTIONS**

6 Equilon agrees that the restrictive covenant, Exhibit D, shall be recorded with the office of  
7 the King County Auditor within 10 days of the entry of this Decree and shall restrict future uses  
8 of the Site. With Ecology's prior written approval, and after completion of the remedial action  
9 required by this Decree, Equilon, or its successor(s), may record an instrument that provides that  
10 the restrictive covenant provided in Exhibit D shall no longer limit uses of the Site or be of any  
11 further force  
12 or effect.

#### 13 **XXX. CONTRIBUTION PROTECTION**

14 A. With regard to claims or cross-claims for contribution against Equilon for Matters  
15 Addressed in this Consent Decree, the parties hereto agree that Equilon is entitled to contribution  
16 protection from any actions, claims, or cross-claims pursuant to MTCA, RCW 70.105D.080,  
17 CERCLA § 107 or 113, or any other federal or state claim or cross-claim seeking, under other  
18 theories, substantially similar relief, to the fullest extent allowed by MTCA, RCW 70.105D.080,  
19 CERCLA § 107 or 113(f)(2). The contribution protection conferred in this section shall not be  
20 frustrated by the use of non-CERCLA or non-MTCA theories to seek relief in the nature of  
21 contribution or indemnification. For the purpose of this paragraph, "Matters Addressed" shall  
22 include all past and future investigation and remedial measures taken at the Site by Equilon  
23 pursuant to this Consent Decree or under Ecology oversight.

24 B. The percentage of response costs paid by Equilon under this Decree shall not in  
25 any way constitute an admission as to an appropriate allocation of liability, if any, at the Site.  
26

This Section XXX shall apply to, but is not limited to, successors in interest who assume obligations under this Decree.

### **XXXI. RESERVATION OF RIGHTS**

By agreeing to this Decree, Equilon and Ecology agree to abide by its terms. The execution and performance of the Decree is not, however, an admission by Equilon of any fact or liability for any purpose other than as a foundation for the entry of this Decree. Equilon's performance under the Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may be asserted in the event of further administrative proceedings or litigation not associated with, or related to, this Decree.

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

**STATE OF WASHINGTON  
ATTORNEY GENERAL'S OFFICE**

By: \_\_\_\_\_  
JAMES PENDOWSKI  
Program Manager  
Toxics Cleanup Program

By: \_\_\_\_\_  
TANYA BARNETT  
WSBA #17491  
Assistant Attorney General

**EQUILON ENTERPRISES LLC**

By: \_\_\_\_\_  
(On behalf of TRMI and EQUILON)  
STEVEN PEYTON  
Seattle Terminal Manager

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
JUDGE  
King County Superior Court